

STATINTL

Letter to Mr. [REDACTED]

and

STATINTL

MEMORANDUM FOR: Mr. [REDACTED]

FROM

SUBJECT : Claim for Compensation

We are now in receipt of the Office of General Counsel study relative to the Comptroller General decisions concerning retroactive temporary promotions and back pay in instances of assignment to positions graded higher than the grade of the employee. We regret the delay in providing this response to you, but the matter was of sufficient concern that it merited a lengthy and extensive review. The Comptroller General decisions B183086 and B184900 and the regulations and laws on which they are based have now been thoroughly reviewed and ~~it is the OGC opinion~~ ^{has advised -} that these decisions do not apply to Agency positions or personnel. The CSC regulations involved in the decisions are not directly applicable to Agency employees and the Agency has no regulations of its own which mandate procedures comparable to the CSC regulations.

The CSC regulations on which the General Counsel decisions are based are contained in Federal Personnel Manual (FPM), Chapter 300, Subchapter 8 and ^{as noted above} do not extend to employees of CIA. ~~Coverage in the FPM is expressly limited to details of employees serving in competitive positions or positions under the General Schedule. Agency employees do not serve in competitive positions or in positions under the General Schedule.~~ Title 5 U.S.C., Section ²¹⁰² ~~2107, 2101~~ define the "competitive

service to include all appointive positions in the executive branch except "positions which are specifically excepted from the competitive service by or under statute." The Agency is specifically exempt from the provision of the Classification Act of 1949 as it relates to the classification of positions under the General Schedule and to pay rates for positions under the General Schedule. CIA employees are appointed under the authority of Section 8(a) of the CIA Act, which authorizes expenditures for personal services notwithstanding "any other provisions of law," and CIA positions are excluded from the competitive civil service.

CSC regulations also provide that

"An officer [such as the DCI who has statutory authority to fix the pay of personnel without regard for the classification law] may, unless further restricted by legislation, elect to fix pay in accordance with the provisions of the General Schedule. However, this election does not make the position subject to the authority given to the Commission by law."

With regard to Agency regulations, there is no provision for procedures comparable to those in the FPM Chapter 300, Subchapter 8, on which the Comptroller General decisions are based. While the CIA regulations provide as a matter of policy that "assignments will normally be made to a position at the employee's grade," they also allow for assignment to a position of higher grade for training purposes (the position affords the employee broader developmental opportunities) or because the employee is the best qualified person available at that time for the position. Moreover, it is significant in relation to this

from its practices, either prior or subsequent to the recent Comptroller General decisions, that its regulation require temporary promotions in the circumstances of your situation. As the Comptroller General acknowledges in these decisions the interpretation of regulations by an Agency charged with their administration is entitled to be given great weight.

The propriety of CIA's assignment policies has been acknowledged by the Comptroller General. In a decision dating back to December 1959 (B140877), it was held that mere adoption of the principles of the Classification Act in the Agency regulations, rules and actions does not require in light of express exemption of CIA from the Act, and the Agency's unique statutory authorities, that CIA follow 5 U.S.C. 38 (now 3341) which essentially limits details to 120 days. The Comptroller General held that the employee's "qualifications were considered under the regulations of the Agency and determined to be proper" and that

as the compensation received during the period was at the grade officially held during the period, there was no basis for allowing a claim for the additional compensation.

Accordingly, I hereby deny
ISO far as it is based on C.G. decisions
~~In summary, your claim is denied on the basis that the Comptroller General decisions (B183086 and B184900) are not applicable to Agency personnel or positions. Neither do we find there has been conflict in your assignment with Agency published regulations relative to employee grade and the grade of the position of assignment. If the above does not satisfy your concern, please feel free to contact this office. You may, of course, submit an appeal directly to the Director of Central Intelligence through the Inspector General of the Agency.~~